

**ENVIRONMENTAL CONSIDERATIONS IN DLA
ACTIONS ABROAD (RCS DD-M(AR)1327)DLAR 1000.29
CAAE
14 Jul 81
DLA REGULATION NO. 1000.29**

(Supplementation is permitted at all levels.)

I. PURPOSE AND SCOPE.

To establish DLA policy, assign responsibilities, and provide procedures for the review of environmental effects of major DLA actions outside the United States, territories, and possessions, as required by Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. This DLAR implements DoD Directive 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, and establishes internal procedures to enable DLA decisionmakers to take into account environmental considerations, and nothing in it shall be construed to create a cause of action. The provisions of this DLAR are applicable to HQ DLA and all DLA field activities. Contractors under the administrative cognizance of the Defense Contract Administration Services are excluded.

II. POLICY.

DLA will act with care in the global commons and within the jurisdiction of a foreign nation. DLA will take into account environmental considerations when it acts in these areas, in accordance with environmental review procedures set forth in enclosures 1 and 2 of this DLAR.

III. DEFINITIONS.

A. Environment. As used in this regulation, means the natural and physical environment and excludes social, economic, and other environments.

B. Federal Action. An action implemented or funded directly by the United States Government.

C. Foreign Nation. Any geographic area (land, water, and airspace) under the jurisdiction of one or more foreign governments, any area under military occupation by the United States alone or jointly with any other foreign government, and any area that is the responsibility of an international organization of governments. "Foreign nation" includes contiguous zones and fishery zones of foreign nations. "Foreign government" in this context includes governments that exercise governmental power outside the United States, regardless of whether recognized by the United States, political factions, and organizations.

D. Global Commons. Geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global commons does not include contiguous zones and fishery zones of foreign nations.

E. Major Action. An action of considerable importance involving substantial expenditures of time, money, and resources, that affect the environment on a large scale, or have substantial environmental effects on a more limited geographical area.

F. Protected Global Resources. Natural or ecological resources of global importance designated for protection by the President, or by the Secretary of State, in those instances where the resources is protected by an international agreement binding on the United States.

G. United States. All States, territories, and possessions of the United States, and all water and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef. For the purpose of this regulation, United States also includes the Commonwealth of Puerto Rico and the Commonwealth of Northern Mariana.

IV. BACKGROUND.

Executive Order 12114, 4 Jan 79, furthers the purpose of the National Environmental Policy Act (NEPA) by setting forth guidance on the responsibilities of Federal Agencies to accomplish environmental review of major actions affecting the environment of the global commons and that of a foreign nation. Those Federal Agencies conducting activities outside the United States are required to develop and publish implementing procedures based on this Executive Order. DLA conducts different types of activities which may or may not require environmental review under this DLAR. These include the transportation and storage of material and supplies outside the United States, construction and operation of facilities within the boundaries of foreign nations, sale or donation of excess material and supplies to foreign nations, and the disposal of waste outside the United States.

V. RESPONSIBILITIES.

A. HQ DLA

1. The Staff Director, Office of Installation Services and Environmental Protection, DLA (DLA-W) will:

a. Exercise primary staff responsibility for coordinating and monitoring activities subject to environmental review procedures in enclosures 1 and 2.

b. Serve as the single point of contact for matters pertaining to this DLAR.

c. Resolve issues regarding the need for environmental documents described in enclosures 1 and 2.

d. Prepare environmental documents for proposed actions for which HQ DLA is the proponent, when required by this DLAR.

e. Receive environmental studies, environmental reviews, and other environmental documents required in enclosures 1 and 2, and arrange for coordination with or distribution to foreign governments or external agencies, as required.

f. Provide assistance and advice on the preparation and processing of environmental documents required in enclosures 1 and 2, and ensure that these documents fulfill the requirements of DoD Directive 6050.7.

2. The Counsel, DLA (DLA-G) will provide advice and assistance, as requested, on the requirements of Executive Order 12114, this DLAR, and other pertinent laws and regulations.

3. The Assistant Director, Office of Plans, Policies and Programs, DLA (DLA-L) will, in addition to the responsibilities in subparagraph 4 below, consult with the Office of the Assistant Secretary of Defense (International Security Affairs) (OASD (ISA)) on significant or sensitive actions affecting relations with another nation.

4. The Heads of Principal Staff Elements (PSEs) will:

a. Ensure that regulations and other policy issuances are reviewed for consistency with this DLAR.

b. Determine the need for environmental documents on proposed HQ DLA actions which may significantly affect the global commons or the environment of another nation and advise DLA-W.

B. The Heads of DLA Primary Level Field Activities (PLFAs) will:

1. Ensure that regulations and other policy issuances are reviewed for consistency with this DLAR.

2. Prepare and process environmental documents on proposed PLFA actions which will significantly affect the global commons or the environment of another nation, in accordance with procedures in enclosures 1 and 2.

VI. PROCEDURES.

A. The requirements for environmental considerations pertaining to the global commons are contained in enclosure 1, and those pertaining to foreign nations and protected global resources are provided in enclosure 2.

B. Environmental documents prepared in accordance with enclosure 1 shall conform to the format for such documents as specified in DLAR 1000.22, Environmental Considerations in DLA Actions in the United States.

C. DoD may approve and periodically update a list of categorical exclusions for actions which do not do significant harm to the environment. As approved by DoD, these exclusions will be made available by DLA-W. Nominations by DLA activities for inclusion in the lists of categorical exclusions are to be submitted to HQ DLA, ATTN: DLA-W.

D. Announcements to be published in the Federal Register concerning the availability of draft and final Environmental Impact Statements (EISs) are to be submitted to DLA-W for transmittal to the Office of the Federal Register.

VII. FORMS AND REPORTS.

Environmental documents (studies, reviews, environmental assessments, and environmental impact statements) required under the provisions of this DLAR are assigned Report Control Symbol DD-M(AR)1327.

BY ORDER OF THE DIRECTOR

R. F. McCORMACK

Colonel, USA

Staff Director, Administration

2 Encl

1. Environmental Review Procedures for Actions Affecting the Global Commons
2. Environmental Review Procedures for Actions Affecting Foreign Nations and Protected Global Resources

DISTRIBUTION 2

Encl 1

DLAR 1000.29

ENVIRONMENTAL REVIEW PROCEDURES FOR ACTIONS AFFECTING THE GLOBAL COMMONS

I. GENERAL.

A. When an action is determined to be a major DLA action that will significantly harm the environment of the global commons, an EIS will be prepared to enable the DLA decisionmaking officials to be informed of the pertinent environmental considerations. If an action requiring an EIS also has an effect on the environment of a foreign nation, or a resource designated as one of the global importance, the statement need not consider or include this effect. The procedures for considering the latter types of impacts are set forth in enclosure 2.

B. The basic guidance and procedures to be followed in evaluating the environmental consequences of an action affecting the global commons are identical to those prescribed for evaluating DLA actions in the United States (DLAR 1000.22). Environmental documents are to be submitted to DLA-W in accordance with procedures in DLAR 1000.22. The instructions pertaining to the preparation and processing of EISs, as further amplified in the following paragraphs, are to be observed when major DLA actions covered by this DLAR are being considered.

II. EMERGENCIES.

When emergency circumstances make it necessary to take action that does significant harm to the environment without meeting the requirements of this enclosure, the DLA proponent of the action will notify DLA-W without delay, who in turn shall promptly consult with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics (MRA&L)). Actions covered under this provision include those that must be taken to promote the national defense or security and actions necessary for the protection of life or property.

III. CATEGORICAL EXCLUSION.

DoD has the authority to issue a list of the types of actions that normally do not individually or cumulatively adversely affect the environment of the global commons. When a type of action is officially approved by DoD as a categorical exclusion and made available by DLA-W, an environmental document is not required. DLA staff offices and field activities identifying recurring type actions that have been determined to meet the above criteria are to submit their recommendations and an accompanying justification to DLA-W, who in turn will forward them to ASD (MRA&L) for approval.

IV. CLASSIFIED INFORMATION.

Environmental assessments (EAs) and EISs that address classified proposals will be safeguarded, and classified information will be restricted from public dissemination, in accordance with procedures contained in DoD Directive 5200.1, DoD Information Security Program, which implements Executive Order 12065. The requirements of the Executive Order take precedence over any requirement of disclosure in this DLAR or DLAR 1000.22. Because only unclassified portions of environmental documents may be made available to the public, every effort will be made to separate classified from unclassified facts and conclusions related to the proposed action so that the former will only be provided to those decisionmakers with a "need-to-know."

V. PUBLIC HEARINGS.

Public hearings are not required on the types of actions covered by this enclosure; however, consideration should be given to holding them when definite benefit would be realized by DLA. Factors to be considered in such a determination include foreign relations sensitivities, whether the hearings would be an infringement or create the appearance of infringement on the sovereign responsibilities of another government, requirements of domestic and foreign governmental confidentiality, requirements of national security, whether meaningful information could be obtained through hearings, time considerations, and requirements for commercial confidentiality.

VI. FOREIGN GOVERNMENTS.

Considerations will be given to informing any foreign government of the availability of environmental documents pertaining to the global commons. When determined to be appropriate, communications

concerning environmental agreements and other formal agreements concerning environmental matters will be coordinated with the Department of State. Within DLA, such coordination will be effected through DLA-W. Informal, working-level communications and arrangements are not included in this coordination requirement.

2. Prepare and process environmental documents on proposed PLFA actions which will significantly affect the global commons or the environment of another nation, in accordance with procedures in enclosures 1 and 2.

VI. PROCEDURES.

A. The requirements for environmental considerations pertaining to the global commons are contained in enclosure 1, and those pertaining to foreign nations and protected global resources are provided in enclosure 2.

B. Environmental documents prepared in accordance with enclosure 1 shall conform to the format for such documents as specified in DLAR 1000.22, Environmental Considerations in DLA Actions in the United States.

C. DoD may approve and periodically update a list of categorical exclusions for actions which do not do significant harm to the environment. As approved by DoD, these exclusions will be made available by DLA-W. Nominations by DLA activities for inclusion in the lists of categorical exclusions are to be submitted to HQ DLA, ATTN: DLA-W.

D. Announcements to be published in the Federal Register concerning the availability of draft and final Environmental Impact Statements (EISs) are to be submitted to DLA-W for transmittal to the Office of the Federal Register.

VII. FORMS AND REPORTS.

Environmental documents (studies, reviews, environmental assessments, and environmental impact statements) required under the provisions of this DLAR are assigned Report Control Symbol DD-M(AR)1327.

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Staff Director, Administration

Encl 2

DLAR 1000.29

ENVIRONMENTAL REVIEW PROCEDURES FOR ACTIONS AFFECTING FOREIGN NATIONS AND PROTECTED GLOBAL

I. GENERAL.

A. The review procedures contained in this enclosure are those pertaining to major DLA actions that

significantly harm the environment of a foreign nation or a protected global resource. In general, the requirements of this enclosure apply only to the following types of actions:

1. Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action.
2. Major Federal actions that are determined to do significant harm to the environment of a foreign nation because they provide to that nation:
 - a. A product, or involve a physical project that produces a principal product, emission, or effluent, that is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk (included in the category of "prohibited or strictly regulated" are asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene).
 - b. A physical project that is prohibited or strictly regulated in the United States by Federal law to protect the environment against radioactive substances.
3. Major Federal actions outside the United States that significantly harm natural or ecological resources of global importance designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, designated for protection by the Secretary of State. Such determinations by the President or the Secretary of State will be provided by DLA-W, as they are made available.

B. No action is required under this enclosure with respect to actions that affect only the environment of a participating or otherwise involved foreign nation and that do not involve providing products or physical projects producing principal products, emissions, or effluents that are prohibited or strictly regulated in the United States.

II. REVIEW PROCEDURES.

Two types of environmental documents shall be used to consider impacts on the environment of actions covered by this enclosure.

A. Environmental Studies. Bilateral or multilateral studies of the environmental consequences of a proposed action prepared by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant. Because it is a cooperative undertaking, the study may be best suited to those types of actions involving the provision of strictly regulated or prohibited products or projects to a foreign nation (paragraph I A 2) and actions that affect a protected global resource (paragraph I A 3).

B. Environmental Reviews. Concise reviews of the environmental issues involved in a proposed action that are unilaterally prepared by the United States. While this type of document may be used for any of the actions identified in paragraph I above, it may be uniquely suitable to actions that have the potential to affect the environment of a nation not involved in the undertaking because it is prepared unilaterally by the United States (paragraph I A 1).

III. EXEMPTIONS.

Exemptions from the provisions of this enclosure include the general exemptions provided under Executive Order 12114, and those approved by DoD.

A. General Exemptions

1. Actions determined by DLA not to do significant harm to the environment outside the United States or to a designated resource of global importance.

2. Actions taken by the President, including actions taken within DoD to prepare or assist in preparing recommendations, advice, or information for the President. Not included are actions taken within DLA to implement or carry out these instruments and issuances after they are promulgated by the President.
3. Actions taken by or pursuant to the direction of the President or a cabinet officer in the course of armed conflict.
4. Actions taken by or pursuant to the direction of the President or a cabinet officer when the national security or national interest is involved.
5. The activities of the intelligence components utilized by the Secretary of Defense under Executive Order 12036.
6. The decisions and action of ASD (ISA), the Defense Security Assistance Agency, and the other responsible offices within DoD components with respect to arms transfers to foreign nations. The term "arms transfers" includes the grant, loan, lease, exchange, or sale of defense articles or defense services to foreign governments or international organizations, and the extension or guarantee of credit in connection with these transactions.
7. Votes and other actions in international conferences and organizations.
8. Disaster and emergency relief actions.
9. Actions involving export licenses, export permits, or export approvals, other than those relating to nuclear activities. These include advice provided by DoD components to the Department of State with respect to the issuance of munitions export licenses under section 38 of the Arms Export Control Act, advice provided by DoD components to the Department of Commerce with respect to the granting of export licenses under the Export Administration Act of 1969, and direct exports of defense articles and services by DLA to foreign governments and international organizations that are exempt from munitions export licenses under section 38 of the Arms Export Control Act. The term "export approvals" does not mean or include direct loans to finance exports.
10. Actions relating to nuclear activities and nuclear material, except actions providing a nuclear production or utilization facility to a foreign nation, as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility.

B. DoD Exemptions. The following types of exemptions may be approved under the authority given the Secretary of Defense:

1. Case-by-Case Exemptions. Specific exemptions may be required because of emergencies, national security considerations, exceptional foreign policy requirements, or other special circumstances that preclude or are inconsistent with the preparation of environmental documents and taking other actions prescribed by this DLAR. The following procedures will be observed in obtaining these exemptions:
 - a. Emergency Actions. Actions taken to promote the national defense or security that cannot be delayed, and actions necessary for the protection of life or property. Such exemptions may be approved on a case-by-case basis only by the Director, DLA. However, a report of the emergency action will be made as soon as feasible to ASD (MRA&L), who with ASD (ISA) shall undertake necessary consultation with the Department of State and the Council on Environmental Quality.
 - b. Other Actions. National security considerations, exceptional foreign policy requirements, and other special circumstances not identified in paragraph B 1 a above, may preclude or be inconsistent with the preparation of environmental documents. In these circumstances, the Director, DLA is authorized to exempt a particular action from the environmental documentation requirements of this enclosure after obtaining the prior approval of ASD (MRA&L).

2. Class Exemptions. Circumstances may exist where a class exemption for a group of related actions is more appropriate than a specific exemption. Class exemptions may be established by ASD (MRA&L). Class exemptions will be made available by DLA-W as they are approved.

3. Categorical Exclusions

a. DoD is authorized by Executive Order 12114 to provide for categorical exclusions, which are a category of actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion, no environmental document is required. Categorical exclusions will be established by ASD (MRA&L).

b. DLA PSEs and PLFAs identifying recurring actions that do not significantly harm the environment protected under the provisions of this enclosure shall forward nominations and accompanying justification to DLA-W. Categorical exclusions will be made available by DLA-W as they are approved.

IV. ENVIRONMENTAL STUDIES

A. General. The requirements with respect to the preparation, format, content, and distribution of environmental studies are flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

1. Enable DLA to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process.

2. Avoid adverse impacts on relations between the United States and foreign governments and international organizations.

3. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved, or with respect to the environment and resources of another nation, may be viewed by that nation as an interference in its internal affairs and its responsibility to evaluate requirements with respect to the environment, unless done with proper regard to the sovereign authority of that nation.

4. Ensure that consideration is given to:

a. Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification. b. National security requirements. This refers to the protection of classified information and other national security interests.

c. Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, particularly where the affected foreign nation is not a participant in the analysis. This may reduce or change substantially the normal content of the environmental study.

d. The extent of DLA participation and its ability to affect the decision made. The utility of the environmental analysis and the need for an indepth review diminishes as DoD's role and control over the decision lessens.

e. International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors include the concept of not unnecessarily hindering United States exports.

B. Content. An environmental study is an analysis of the likely environmental consequences of the proposed action that is to be considered in the decisionmaking process. It includes a review of the affected environment, predicted effects of the action, significant measures to be taken to avoid environmental harm or otherwise to better the environment, and significant environmental considerations and actions to be taken by the other participating nations, bodies, or organizations to protect or enhance the environment, if any.

C. Preparation. A judgment will normally be made in consultation with concerned foreign governments or organizations as to whether the proposed action is one that would do significant harm to the environments covered by this enclosure. If a negative decision is made, the file will be documented with a record of that decision and the decisionmakers who participated. If a decision is made to prepare a study, no action concerning the proposal may be taken that would do significant harm to the environment, until the study has been completed and the results considered.

D. Coordination. Communications with foreign governments concerning environmental studies will be coordinated through DLA-W. Informal, working-level communications and arrangements are not included in this coordination requirement.

E. Study Distribution. Subject to the constraints in subparagraph A above and, except where classified information is involved, environmental studies will be made available to the Department of State, the Council on Environmental Quality, other interested Federal Agencies, and, on request, to the public in the United States. Documents will be submitted to DLA-W for necessary distribution. No distribution is required prior to the preparation of the final version of the study, or prior to implementing the action covered by the study.

F. Classified Information. Classified information will be safeguarded from disclosure in accordance with DLAR 5400.13, Clearance of Information for Public Release.

V. ENVIRONMENTAL REVIEWS

A. General. The guidance on the preparation, coordination, and distribution of environmental studies provided in paragraph IV above also applies to environmental reviews.

B. Content. An environmental review is a survey of the important environmental issues associated with a proposed action that is to be considered in the decision-making process. It does not include all possible environmental issues, and it does not include the detailed evaluation required in a conventional EIS. Because there is no foreign government or international organization participation in its preparation, the content may be circumscribed due to limitations in available information and foreign relations' sensitivities. To the extent practicable, an environmental review should include the following:

1. A statement of the action to be taken including its timetable, physical features, general operating plan, and other similar broad descriptive factors.
2. Identification of the important environmental issues involved.
3. The aspects of the actions taken or to be taken by the DoD component that mitigate the impact on the environment.
4. The actions known to have been taken or to be planned by the government of any participating and affected foreign nations that will affect environmental considerations.